IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.796 OF 2005

Kalyan Kisan Bhondve @ Bhosale ... Petitioner

versus

The State of Maharashtra & ors. ... Respondents

...

Mr.Abhaykumar Apte, for the Petitioner.

Mr.K.V. Saste, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

24th March 2005

P.C.:

. Heard Counsel for the parties. The principal ground on which request for furlough leave made by the Petitioner came to be rejected by the competent authority is that the prisoner had overstayed leave on the earlier occasion by 344 days and was taken into custody only after he was arrested by the police.

. Counsel for the Petitioner submits that although the Petitioner overstayed on the earlier occasion, but since the Petitioner has been punished in terms of the order passed under the Rules of 1959, that once again cannot be made a ground to refuse furlough leave or to treat the Petitioner ineligible for furlough leave in posterity. In support of this submission, reliance is placed on the judgment of Single Judge of this Court reported in 2003(4) Mh.L.J. 349 in the case of Santosh Bhagwandin Bachharaj v. Superintendent, Central Prison, Amravati and another decision of the same Single Judge reported in 2003(4) Mh.L.J. 491 in the case of Sarfuddin Aminuddin v. State of Maharashtra and others.

. With utmost respect to the view expressed in the said two decisions, in my opinion, the same is on the erroneous assumption that refusal of furlough leave amounts to double punishment. Grant or non-grant of furlough leave is a matter which is governed by the provisions of Rules of 1959. Rule 4(10) thereof expressly covers the situation with which we are concerned, namely,

the prisoner defaulted in any way in surrendering at the appropriate time on parole or furlough leave to be ground to refuse furlough to such a prisoner. The said rules of 1959 are statutory rules. If that is the ground invoked by the authority in a given case, by no standards, it can be said that it amounts to inflicting punishment on the person in respect of which he has already been punished under the same rules. The rule of double jeopardy has no application to the case on hand. For, that is a circumstance or a condition provided for in rule 4, so as to refuse furlough leave. Indeed, availing of furlough leave is a right of the prisoner, but that right is not absolute, indefeasible or unbriddled, albeit subject to the other provisions of the Rules of 1959 such as Rule 4. The fact that the prisoner has been already punished for overstaying the furlough leave, cannot be the basis to hold that he is entitled for furlough leave inspite of the earlier default, and the authority would be unjustified in entertaining apprehension that such a person is likely to indulge in similar act and perhaps not become available to undergo the remaining

sentence. In other words, the fact that the prisoner is punished for overstaying furlough leave and rejection of furlough leave application on that ground inspite of punishment already imposed are perceptibly different and independent issues. Viewed in this perspective, in my opinion, the view taken in the reported decisions cited supra requires to be reconsidered.

. Accordingly, Office is directed to place papers before the learned Chief Justice for assigning the case to the appropriate (larger) Bench.

(A.M.KHANWILKAR,J.)